

**IC 23-19**

**ARTICLE 19. INDIANA UNIFORM SECURITIES ACT**

*Effective 7-1-2008.*

**IC 23-19-1**

**Chapter 1. General Provisions**

*Effective 7-1-2008.*

**IC 23-19-1-1**

**Short title**

*Effective 7-1-2008.*

Sec. 1. This article may be cited as the Indiana Uniform Securities Act.

*As added by P.L.27-2007, SEC.23.*

**IC 23-19-1-2**

**Definitions**

*Effective 7-1-2008.*

Sec. 2. In this article, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. However, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this article.

(2) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this article; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C).

(3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this article.

(4) "Commissioner" means the securities commissioner appointed under IC 23-19-6-1(a).

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an insured depository institution as defined in Section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted under that provision.

(8) "Filing" means the receipt under this article of a record by the commissioner or a designee of the commissioner.

(9) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise, representation, or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of the terms as applied by or defined in courts of law or equity. The terms are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal, dividends, and interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of ten million dollars (\$10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in clause (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000);

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the

Small Business Investment Act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars (\$10,000,000);

(K) a private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000);

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer", as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);

(N) a "major U.S. institutional investor", as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000) not organized for the specific purpose of evading this article; or

(P) any other person specified by rule adopted or order issued under this article.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of

business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this article.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and is:

(i) an "investment adviser representative", as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or

(ii) not a "supervised person", as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this article.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or

manager under the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means IC 23-2-1 (before its repeal).

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers,

partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or another specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the

Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

*As added by P.L.27-2007, SEC.23.*

### **IC 23-19-1-3**

#### **Federal statutes**

***Effective 7-1-2008.***

Sec. 3. "Securities Act of 1933" (15 U.S.C. 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. 1001 et seq.), "National Housing Act" (12 U.S.C. 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. 1 et seq.), "Internal Revenue Code" (26 U.S.C. 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. 78a et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on January 1, 2009.

*As added by P.L.27-2007, SEC.23.*



**IC 23-19-1-4****Construction in relation to corporation**

*Effective 7-1-2008.*

Sec. 4. Nothing in this article shall be construed to relieve corporations from making reports required by law to be made to the secretary of state or any other state officer, or paying the fees to be paid by corporations. This article shall not be construed to repeal any law regulating the organization of corporations in this state, or the admission of any foreign corporation, but the provisions of this article shall be construed to be additional to any provisions regulating the organization of a corporation under the laws of this state, or the admission of a foreign corporation to do business in this state.

*As added by P.L.27-2007, SEC.23.*

**IC 23-19-1-5****Official comments incorporated**

*Effective 7-1-2008.*

Sec. 5. Official comments adopted and published by the:

(1) secretary of state Indiana uniform securities act advisory committee; and

(2) National Conference of Commissioners on Uniform State Laws to the extent the comments are not inconsistent with the comments adopted by the committee under subdivision (1);

may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in this article's construction and application.

*As added by P.L.27-2007, SEC.23.*